

IMPORTANT CHANGES IN LEGISLATIVE PROCEDURE

1. ORDER OF BUSINESS OF A REGULAR SESSION.—At the beginning of the Regular Session of the Forty-second Legislature the following opinion was rendered by the Attorney General:

State of Texas,
Offices of the Attorney General,
Austin.

No. 2828.

Constitution—Amendment, Section 5 of Article 3,
State Constitution Construed.

1. Each house of the Legislature, by a four-fifths vote, may determine its own order of business.

2. Having legally adopted its order of business, bills or resolutions may be introduced in, or considered by, either house, in accordance therewith, not being restrained by said amendment.

Offices of the Attorney General,
February 13, 1931.

Hon. Fred H. Minor, Speaker of the House of Representatives, Capitol.

Dear Sir: Your communication of the 12th instant, addressed to the Hon. James V. Allred, Attorney General, has been referred to me for reply.

Your communication is as follows:

“At the general election held in November last, Section 5 of Article 3 of the State Constitution was amended as follows: (Here follows said amendment, which is copied below.)

“Pursuant thereto, the House of Representatives, on the 21st day of January, as shown on page 102 of the House Journal, adopted by a vote of one hundred and thirty-three yeas and no noes, the following resolution:

"Whereas, At the general election on November 4, 1930, Section 5 of Article II of the Constitution of Texas was amended so as to hereafter read as follows, to wit:

"The Legislature shall meet every two years at such times as may be provided by law and at other times when convened by the Governor. When convened in Regular Session, the first thirty days thereof shall be devoted to the introduction of bills and resolutions, acting upon emergency appropriations, passing upon the confirmation of the recess appointees of the Governor and such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided, that during the succeeding thirty days of the Regular Session of the Legislature the various committees of each house shall hold hearings to consider all bills and resolutions and other matters then pending; and such emergency matters as may be submitted by the Governor; provided further, that during the following sixty days the Legislature shall act upon such bills and resolutions as may be then pending and upon such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided, however, either house may otherwise determine its order of business by an affirmative vote of four-fifths of its membership.

"Whereas, Under said amendment it is specifically provided that either house may otherwise determine its order of business by an affirmative vote of four-fifths of its membership; therefore, be it

"Resolved by the House of Representatives, by an affirmative vote of four-fifths of its members, That the order of business is hereby determined to be otherwise, and except as herein expressly provided the rules as printed in the Manual of the Forty-first Legislature, with the amendments thereto shown in the Journal, shall govern the procedure in the House and may be amended as therein provided.

"1. No bill shall be considered or tabled, unless it has been first referred to a committee, and reported therefrom. Bills and resolutions introduced during the first sixty days may be considered by committees and in the House and

disposed of at any time during the session; provided, however, no bill or joint resolution shall be introduced after the first sixty days of a Regular Session of the Legislature, except by consent of a two-thirds vote of the House; and if so ordered by a two-thirds vote, such bill or joint resolution shall then be referred to a committee for consideration the same as other bills and joint resolutions. It is further provided that after the first sixty days when a member desires to introduce a bill or joint resolution, he shall be allowed five minutes in which to explain the purposes of his bill, the vote then being taken without further debate.

"In view of the adoption of the foregoing resolution, the House of Representatives has heretofore not only permitted the introduction of bills, but committee hearings have been held during the first thirty-day period, and some bills have been considered and passed by the House. The first thirty-day period has now expired. Under the procedure adopted by virtue of the foregoing resolution, I desire to submit the following questions, to-wit:

"(a) Can bills and resolutions be introduced in the House during the succeeding thirty-day period without further action on the part of the membership?

"(b) Has the House acted legally and in conformity with the Constitution in permitting its committees to consider bills and resolutions during the first thirty days, and in passing upon the same on the floor of the House, in view of the adoption of the resolution hereinabove set forth?

"(c) Can the House legally consider and pass bills and resolutions during the succeeding thirty-day period without further action upon the part of the membership, in view of the adoption of the resolution hereinabove set forth?

"(d) In view of the adoption of the resolution above herein set out, may bills and resolutions be introduced in the House and committee hearings held thereon after the expiration of the first sixty-day period, where such bills or resolutions have been introduced by consent of a two-thirds vote of the House as in such resolution provided?"

It will be noted that the portion of said amendment pertinent to this inquiry falls into four subdivisions, and these subdivisions are printed separately and numbered, and the several subdivisions are separated into sentences, so that they may be the more easily held in mind and comprehended.

1.

When convened in Regular Session, (a) the first thirty days thereof shall be devoted to the introduction of bills and resolutions; (b) acting upon emergency appropriations; (c) passing upon the confirmation of the recess appointees of the Governor; (d) and such emergency matters as may be submitted by the Governor in special messages to the Legislature.

2.

Provided, that during the succeeding thirty days of the Regular Session of the Legislature, (a) the various committees of each house shall hold hearings to consider all bills and resolutions, and other matters then pending; (b) and such emergency matters as may be submitted by the Governor.

3.

Provided further, that during the following sixty days, (a) the Legislature shall act upon such bills and resolutions as may be then pending; (b) and upon such emergency matters as may be submitted by the Governor in special messages to the Legislature.

4.

Provided, however, either house may otherwise determine its order of business by an affirmative vote of four-fifths of its membership.

The first three of the above subdivisions are clearly and plainly intended to provide an order of business or methods of procedure for the Legislature. The last proviso, which is set out as subdivision four above, clearly indicates that the Legislature, in framing said amendment, understood

same to contain or provide merely an order of business, otherwise the provision that "either house may otherwise determine its order of business, etc.," would be meaningless.

Again, it may be seriously questioned whether the language contained in said amendment, even without the final proviso, should be construed so as to confine the Legislature exclusively to the order of business set out in the amendment. This is especially true of the second and third subdivisions, which cover the second thirty and last sixty days of the session. The Legislature is not expressly forbidden to pursue an order of business different from that laid down in the amendment and, if forbidden at all, it would be merely by inference or implication and, save possibly in the first subdivision, such inference or implication, in my mind, does not arise necessarily from the language used.

For instance, if the Legislature can do nothing during the second thirty-day period except the things prescribed, then both the Senate and the House, as bodies, can hold no sessions nor transact any kind of business, as such, because the amendment provides only that the committees of each house shall consider bills and resolutions and other pending matters and such emergency matters as may be submitted by the Governor. There is nothing named for the Legislature to do, unless the language is intended to mean that the Legislature, instead of the committees, are to consider emergency matters submitted by the Governor, which was probably meant to be said. A construction which brought about such a result would hardly be deemed reasonable, much less necessary. Standing alone, the language used to prescribe the order of business for the second thirty days is not such as to prevent the introduction and consideration of bills and resolutions in either house, and I believe the same may be said of the rules of order prescribed for the last sixty days of the session.

Whatever effect may be given to the language used in the first three subdivisions of said amendment, I am clearly of the opinion that the last proviso places beyond doubt

or cavil the right of either house to "otherwise determine its order of business" by a four-fifths vote.

Provisos and exceptions are similar and are intended to restrain the preceding enacting clause or in some manner to modify it. The general intent of the enacting clause will be controlled by the particular intent subsequently expressed by proviso. 2 Southerland's Statutory Construction, Section 351; 50 Corpus Juris, page 834.

In the case of Campbell, Receiver, vs. Wiggins, Tax Collector, our Supreme Court had under consideration the construction of a statute which in general terms exempted the property of the I. & G. N. Railway Company from taxation, but by proviso excepted certain property from said exemption. Speaking through Justice Gaines, the court gives the following as to the effect of a proviso:

"Let it be admitted, for the sake of argument, that the clause which declares the exemption, if it stood alone, would embrace property acquired jointly by the two railroads, or even that acquired exclusively by the Great Northern. Which is to control—that clause or the proviso? The enacting clause directly points out what is to be exempt, but defines what is not exempted by implication only. The proviso goes further, and declares affirmatively that certain property shall not be exempt. In the language of Chief Justice Marshall: 'The proviso is generally intended to restrain the enacting clause, and to except something which would otherwise have been within it,' etc. Wayman vs. Southard, 10 Wheat., 30. 'The general intent must be controlled by the particular intent subsequently expressed.' Suth. on Stat. Con. The sole purpose of the proviso is to exclude from the operation of the exempting clause what might otherwise be construed to be within it, and the meaning being clear, it must govern." (Italics mine.) 85 Texas, 424, 428.

To the same effect is the holding in the following cases:

Potter et al. vs. Robison, Land Commissioner, 102 Texas, 448.

Galveston Co. vs. Gorman, 49 Texas, 287.

Quanah vs. White, 88 Texas, 14.

It may be contended that by using the mandatory term 'shall,' in framing said amendment, the Legislature intended that the order of business so directed must be followed, and the mere fact that the final proviso was inserted might indicate this. This unquestionably would not prevent the proviso from having a controlling effect on the entire preceding provisions; the fact that the provisions were deemed mandatory might make a proviso necessary. If the language of the amendment is such as to make the order of business stated therein merely suggestive or permissible, then no proviso would be necessary. Whether said language was considered by the Legislature, which framed the amendment, as mandatory or merely permissive, the Legislature clearly intended to place the matter beyond question or doubt by adding the final proviso under discussion.

In the light of the foregoing, I will make categorical answers to your several questions as follows:

(a) "Can bills and resolutions be introduced in the House during the succeeding thirty-day period without further action on the part of the membership?" I answer, yes.

(b) "Has the House acted legally and in conformity with the Constitution in permitting its committees to consider bills and resolutions during the first thirty days, and in passing upon the same on the floor of the House, in view of the adoption of the resolution hereinabove set forth?" This question is answered, yes.

(c) "Can the House legally consider and pass bills and resolutions during the succeeding (second) thirty-day period without further action upon the part of the membership, in view of the adoption of the resolution hereinabove set forth?" Answer, yes.

(d) "In view of the adoption of the resolution above herein set out, may bills and resolutions be introduced in the House and committee hearings held thereon after the expiration of the first sixty-day period, where such bills or resolutions have been introduced by consent of a two-thirds vote of the House as in such resolution provided?" To this question I also answer, yes.

It appears from the record that the resolution whereby the House made and determined its own rules of order was adopted unanimously. Thereby the House construed the amendment as giving to that body the right to make its own rules of order if done by a four-fifths vote.

Under many decisions of our Supreme Court, the presumption obtains that the construction placed on a provision of the Constitution by the Legislature is correct and that it will be followed by the courts unless it is clearly wrong. It ought to strengthen that presumption in this case that there are several eminent lawyers among the membership of the House and that the resolution was adopted by more than the necessary four-fifths of the entire membership and without a dissenting vote of any member present.

With great respect, I beg to be,

Yours very truly,

(Signed)

F. O. MCKINSEY,
Assistant Attorney General.

FOM:GC

This opinion has been considered in conference, approved, and is now ordered recorded.

(Signed)

JAMES V. ALLRED,
Attorney General of Texas.

2. DURATION OF REGULAR SESSIONS—MILEAGE AND PER DIEM OF MEMBERS.—The following opinions were rendered to Hon. Fred H. Minor, Speaker of the Forty-second Legislature:

Offices of the Attorney General,

January 19, 1931.

Hon. Fred H. Minor, Speaker, Texas House of Representatives, Capitol Building, Austin, Texas.

Dear Sir: I am in receipt of your letter of the seventeenth instant requesting the opinion of this Department as to what mileage and per diem should be paid members of the Forty-second Legislature. Your letter reads as follows:

"Under the recently adopted constitutional amendment it is provided that the members of the Legislature shall receive a per diem of not exceeding \$10.00 per day, and in addition to the per diem the members shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not exceed \$2.50 for every twenty-five miles traveled, the distance to be computed by the nearest and most direct route of travel.

"Since the Legislature has convened a statute has been passed by the Legislature and approved by the Governor, repealing the old article of the statutes, to-wit: Article 6818, and also a statute has been passed amending Article 6824 to the effect that the provisions of the last mentioned article shall not apply to the fixing of salaries of members of the Legislature within the constitutional limits. In addition to the passage of the above mentioned legislation, a House Concurrent Resolution has been passed, fixing the per diem of the members at \$10.00 per day, in keeping with the provisions of the recently adopted constitutional amendment, and also fixing the mileage at \$2.50 for every twenty-five miles traveled in going to and returning from the seat of government. These enactments were all approved by the Governor on Friday, January 16th, and became effective on that date.

"We are called upon under the custom heretofore existing to issue warrants today for such per diem and mileage as the members are entitled to receive under the law. Will you be kind enough to render us an opinion, advising upon what basis such per diem and mileage should be paid under the conditions hereinabove detailed. I am herewith enclosing a copy of House Concurrent Resolution No. 6 for your information.

"Thanking you for your prompt attention in this matter, I am * * *."

The copy of House Concurrent Resolution No. 6, which accompanied your letter, reads:

"Be it resolved by the House of Representatives of the State of Texas, the Senate concurring, that the pay

of the members of the Forty-second Legislature is hereby fixed at Ten Dollars (\$10.00) per diem for the first One Hundred and Twenty Days (120) of the session, and after that the sum of Five Dollars (\$5.00) per diem for the remainder of the session.

“Be it further resolved in addition to the per diem the members of each house shall be entitled to mileage in going to and returning from the seat of government, which mileage shall be Two Dollars and Fifty Cents (\$2.50) for every twenty-five (25) miles, the distance to be computed by the nearest and most direct route of travel, from a table of distances prepared by the Comptroller to each County Seat now or hereafter to be established; no member to be entitled to mileage for any extra session that may be called within one (1) day after the adjournment of the Regular or any Called Session.”

Since the receipt of your request at noon, Saturday, January 17th, we have given these matters almost constant consideration, and in the short time we have had, we have investigated all available authorities on the subject.

It is our opinion that Section 24, Article 3 of the Constitution of Texas, as amended in 1930, authorized the present Legislature to fix the compensation of its members at \$10.00 per diem for the first one hundred and twenty days of the session and the mileage of each member at \$2.50 for every twenty-five miles, especially in view of the interpretation placed upon said amendment by the Legislature in House Concurrent Resolution No. 6, a copy of which is above set out.

You are accordingly advised that, in our opinion, warrants may be issued in accordance with the terms of said resolution.

Respectfully yours,
(Signed) JAMES V. ALLRED,
Attorney General of Texas.

Offices of the Attorney General,
Austin, Texas, May 4, 1931.

Hon. Fred H. Minor, Speaker of the House of Representatives.

Dear Mr. Minor: Receipt is acknowledged of your letter of May 2, reading in part as follows:

"Senate joint resolution No. 19, passed at the Regular Session of the Forty-first Legislature, proposed the following amendments to the State Constitution, to-wit:

" 'Section 1. That Section 5 of Article 3 of the Constitution of the State of Texas be amended so as to hereafter read as follows:

" 'The Legislature shall meet every two years at such time as may be provided by law and at other times when convened by the Governor. When convened in Regular Session, the first thirty days thereof shall be devoted to the introduction of bills and resolutions, acting upon emergency appropriations, passing upon the confirmation of recess appointees of the Governor, and such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided, that during the succeeding thirty days of the Regular Session of the Legislature the various committees of each house shall hold hearings to consider all bills and resolutions and other matters then pending; and such emergency matters as may be submitted by the Governor; provided further, that during the following sixty days the Legislature shall act upon such bills and resolutions as may be then pending and upon such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided, however, either house may otherwise determine its order of business by an affirmative vote of four-fifths of its membership.

" 'Sec. 2. That Section 24 of Article 3 of the Constitution of the State of Texas be amended so as to hereafter read as follows:

" 'Members of the Legislature shall receive from the public Treasury a per diem of not exceeding \$10 per day

for the first 120 days of each session, and after that not exceeding \$5 per day for the remainder of the session.

“‘In addition to the per diem, the members of each house shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not exceed \$2.50 for every twenty-five miles, the distance to be computed by the nearest and most direct route of travel, from a table of distances prepared by the Comptroller to each county seat now or hereafter to be established; no member to be entitled to mileage for any extra session that may be called within one day after the adjournment of a Regular or Called Session.’

“These amendments were duly adopted by a vote of the people on last November, and the Forty-second Legislature was organized in conformity with the constitutional amendments thus adopted.

“On May 12th, 1931, the Legislature will have been in session for a period of 120 days. Please advise whether the Legislature can extend the Regular Session beyond the expiration of the 120-day period in the event it should be deemed necessary so to do in order to complete in a satisfactory manner the legislative program now pending.”

Before the adoption of the amendment to Section 5 of Article 3 of the Constitution, set out in your letter, said section provided:

“The Legislature shall meet every two years at such times as may be provided by law and at other times when convened by the Governor.”

The last quoted provision was brought forward in identical words in the amendment adopted by vote of the people in November, 1930. As amended, said section carried the additional provision set out in your letter dealing with the order of business during a Regular Session.

There is no express limitation under the amendment as to the duration of a Regular Session. In the absence of such express limitation, it would necessarily have to be by implication. The amended section, however, merely prescribes the order of business for 120 days of the Regular Session and does not, thereby, limit such session to

that period of time. After prescribing what shall be done in the first thirty days, and the succeeding thirty days, it is then provided further that "during the following sixty days the Legislature shall act upon such bills and resolutions as may be then pending," etc. It is to be noted that in referring to the third period, or division, of the 120 days of the Regular Session the language, "the following sixty days," rather than "the last or final sixty days," is employed.

Section 24 of Article 3, prior to its amendment in November, 1930, provided for compensation and mileage of members of the Legislature. That part of said section dealing with per diem read as follows:

"The members of the Legislature shall receive from the public Treasury such compensation for their services as may from time to time be provided, but not exceeding \$5 per day for the first sixty days of each session; and after that not exceeding \$2 per day for the remainder of the session; except the first session held under this Constitution, when they may receive not exceeding \$5 per day for the first ninety days and after that not exceeding \$2 per day for the remainder of the session."

Amended Section 24 of Article 3 covering this matter largely employs the identical language of said section before its amendment, the principal difference being only in the amount to be received per day. Clearly, the provision that the members of the Legislature shall receive not exceeding \$10 per day for the "first 120 days of each session, and after that not exceeding \$5 per day for the remainder of the session," evidences an intention not to limit the Regular Session of the Legislature to 120 days. If it had been intended to place such a limitation upon the Regular Session, it would have been unnecessary to make any provision for the pay "for the remainder of the session."

Special Sessions are expressly limited to thirty days' duration by the terms of Section 40 of Article 3 of the Constitution, reading in part as follows: " * * * and no such session shall be of longer duration than thirty days."

Our courts have held that constitutional provisions relating to the same subject must be construed so as to give effect to all of them if possible. *City of San Antonio vs. Toepperwein*, 133 S. W. 416, 104 Texas 43.

As stated heretofore, the provisions of Section 5, which you quote in your letter, relates solely to the order of business for the first 120 days of the Regular Session. There seems to be no constitutionally prescribed order of business for the remainder of the Regular Session.

It is significant that the two sections amended were submitted in the same joint resolution to a vote of the people. Construing them together, therefore, we are of the opinion that the Regular Session of the Legislature is not limited to 120 days.

Very truly yours,

JAMES V. ALLRED,
Attorney General of Texas.

The Forty-second Legislature was in session nearly two weeks after the expiration of the one hundred and twenty day period, and during this time the members received five dollars per day.

By H. B. No. 1, approved January 16, 1931, Article 6818 of the Revised Civil Statutes of Texas of 1925 was repealed because of the newly adopted constitutional amendments, and Article 6824 of the Revised Civil Statutes of the State of Texas of 1925 amended so as to read as follows:

"Article 6824. The salaries of officers shall not be increased nor diminished during the term of office of the officers entitled thereto, provided, however, that the members of the Legislature by majority vote may at any time set their salaries at any amount within the constitutional limit."

In conformity with the article the following concurrent resolution was passed:

HOUSE CONCURRENT RESOLUTION No. 6.

Be it resolved by the House of Representatives of the State of Texas, the Senate concurring, That the pay of

the members of the Forty-second Legislature is hereby fixed at ten dollars (\$10) per diem for the first one hundred and twenty (120) days of the session, and after that the sum of five dollars (\$5) per diem for the remainder of the session. Be it further

Resolved, In addition to the per diem the members of each house shall be entitled to mileage in going to and returning from the seat of government, which mileage shall be two dollars and fifty cents (\$2.50) for every twenty-five (25) miles, the distance to be computed by the nearest and most direct route of travel, from a table of distances prepared by the Comptroller to each county seat now or hereafter to be established; no member to be entitled to mileage for any extra session that may be called within one (1) day after the adjournment of the Regular or any Called Session.

This resolution was approved by the Governor on January 16, 1931.

3. AUTHORITY OF HOUSE OF REPRESENTATIVES TO REMAIN IN SESSION FOR IMPEACHMENT PURPOSES AT END OF A THIRTY-DAY CALLED SESSION—COMPENSATION OF MEMBERS AND RIGHT TO HIRE EMPLOYEES.—The following opinion was rendered to Hon. Fred H. Minor, Speaker of the Forty-second Legislature:

Offices of the Attorney General,
Austin, Texas, August 17, 1931.

Hon. Fred H. Minor, Speaker of the House of Representatives, Capitol Building, Austin, Texas.

Dear Sir: Your inquiry of the 15th instant addressed to Hon. James V. Allred, Attorney General, requesting an opinion of this Department, has been received. The inquiry is in connection with certain proceedings now under way in the House of Representatives, as disclosed by the following statement of facts taken from your letter:

“The House of Representatives is now sitting for the purpose of hearing and considering charges of impeachment preferred against the Hon. J. B. Price, judge of the

Twenty-first Judicial District of Texas, which charges are shown on pages 551 to 557, inclusive, of the House Journal under date of July 31st, 1931.

"The resolution providing for the method and manner of conducting the investigation is set out at page 558 of the House Journal, and is in conformity with the resolutions adopted in previous sessions of the Legislature relating to the hearing of impeachment charges.

"The right of the House of Representatives to sit after the expiration of the thirty day period of the First Called Session has been called in question, based upon Section 40 of Article 3 of the State Constitution which reads as follows:

" 'Section 40. When the Legislature shall be convened in Special Session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session or presented to them by the Governor; and no such session shall be of longer duration than thirty days.'

"The First Called Session of the Legislature convened on July 14th, 1931. On July 31st, the impeachment charges were preferred against Judge Price, as above stated. The thirty day period expired at midnight of August 12th. The House Concurrent Resolution relating to adjournment provided that while the House would stand adjourned for legislative purposes at midnight of August 12th, 1931, it would continue to sit for the purpose of hearing the impeachment charges against Judge J. B. Price which had heretofore been filed, whereupon the House adjourned at midnight of August 12th so far as legislative matters were concerned, but adjourned until 9 o'clock, a. m. of August 13th for the purpose of continuing the hearing of the impeachment charges, which hearing was in reality begun on the afternoon of August 12th. The adjournment resolution, as well as the motion for adjournment until the following day above referred to, were unanimously adopted, and pursuant thereto, the House has continued to sit from day to day, and is now in session for the purposes above herein set out."

Your first inquiry, based upon the foregoing statement of facts, reads as follows:

“(1) Is the House of Representatives authorized under the Constitution and laws to continue in session for the purpose of hearing the charges of impeachment now under consideration after the expiration of the thirty day period in which the First Called Session of the Legislature sat for the consideration of legislative matters?”

* * * * *

We deem the matter too well settled in Texas to admit of further discussion. It is settled by the Constitution, by statute, and by judicial and departmental opinions. There is no dissenting voice; there can, in good reason, be none. The impeaching power is a judicial power, granted to the House of Representatives for exercise in those enumerated cases where the influence or official position of the accused is such that the ordinary processes of law would be ineffective to secure his removal. It is necessary for the preservation of pure government and to preserve the equal balance of power between the three co-equal departments of the government. If it be said that this practically unlimited power is subject to abuse, the answer is that the same observation is true of all grants of power. Except in the post-war Reconstruction Period this nation has witnessed far less usurpation of constitutional power by its legislative than by its judicial bodies. In final analysis, the stability and constitutional functioning of all governments depends not upon mere forms, but upon the men who administer them. Our Constitution saw fit to grant this broad power to the Legislature despite the fact that it was framed by the very men who had suffered most from governmental tyranny during the trying Reconstruction Days. The Constitutional Fathers saw the necessity of creating a governmental body to act in impeachment matters sufficiently strong and free from local influence to give on the one hand an impartial trial, and on the other, to adequately protect the public.

In our opinion, and you are so advised, that whenever the Legislature meets in a Regular or Called Session the

House may consider any impeachment matter thereat, and after expiration of the *legislative* session, may continue to hear the *judicial* matters (impeachments) then pending before it. When the Governor calls a Special Session of the Legislature, he calls it to consider such legislative matters as he sees fit to submit and such judicial matters (impeachments) as it sees fit to institute. The time for consideration of the legislative matters ends in thirty days; the time for considering an impeachment proceeding then pending before the House expires only with the term for which that House is elected. The House may convene in Regular Session, Called Session, or in any of the modes set out in Article 5962, but once it enters into the consideration of a judicial matter, it sits without regard to the rules governing the legislative department and may continue its hearing until it sees fit to adjourn. In this respect, its power is exclusive, complete, final, and subject to no review by any court or executive department. *State of Oklahoma ex rel. Trapp, Acting Governor vs. Chambers*, 220 Pac. 890, 30 A. L. R. 1144. Your first question is answered in the affirmative.

Your second question reads as follows:

“(2) Will the members of the House be entitled to receive the sum of ten dollars per day as compensation while sitting for the purpose of hearing such impeachment charges, and if so, will the Speaker of the House be authorized to sign warrants therefor without further action of the House by resolution or otherwise providing for such compensation?”

Section 24 of Article 3 of the Constitution, as amended by proposal ratified November 4, 1930, reads in part as follows:

“Members of the Legislature shall receive from the public Treasury a per diem of not exceeding \$10.00 per day for the first 120 days of *each session* (italics ours) and after that not exceeding \$5.00 per day for the remainder of the session * * *

House Concurrent Resolution No. 6, Regular Session

42nd Legislature, p. 891, General Laws 42nd Legislature, fixes the pay of members of the 42nd Legislature at \$10.00 per day for the first 120 days of the session and thereafter at the rate of \$5.00 per day for the remainder of the session. Article 5962, R. C. S. 1925, reads in part as follows:

"The members of the House and Senate, when either shall be sitting for impeachment purposes, and when not in session for legislative purposes, shall receive the per diem fixed for members of the Legislature during legislative sessions or out of the contingent funds of the respective Houses, and the agents of the House or Senate * * * shall be paid as may be provided in the resolutions providing therefor out of said contingent funds."

It is fundamental that the Legislature could not, by law, provide for payment of compensation at an impeachment session at a rate higher than that permitted by the Constitution for legislative sessions. The Statutes quoted fixed the pay at the rate of compensation allowed during legislative sessions. The Constitutional provision and the Resolution referred to fix this rate at \$10.00 per day for the first 120 days of the session. This Department has previously held that the word "session" as used in the Constitutional provision mentioned is broad enough to include an impeachment session of the House as well as a legislative session. Opinions of Attorney General, 1924-26, p. 329.

The expression "each session" as used in Section 24 of Article 3 of the Constitution means each and every session including each special session. It does not limit the \$10.00 compensation to the first 120 days of an elective term during which the Legislature may be in session. It applies to each separate session of each duly elected Legislature. Such was the uniform Legislative interpretation of Article 3, Section 24, before amendment, and since the same words are carried forward in the amended section, the point is too well settled to be questioned now. Your letter of inquiry contains this statement:

"No resolution has been passed, however, (pertaining to

this impeachment hearing) providing for the compensation of members of the House except a resolution passed during the early part of the Regular Session of the Forty-second Legislature, fixing the compensation at ten dollars per day."

It follows from what was said in response to your first inquiry that your present hearing is a continuation of the First Called Session of the 42nd Legislature. The rate of compensation in this impeachment proceeding is fixed by the above quoted resolution, statute, and constitutional provision. House Bill No. One of the First Called Session of the 42nd Legislature makes an appropriation of \$150,000.00 to pay the per diem and mileage of the members and other expenses of the First Called Session of the 42nd Legislature. House Bill No. 75 of the First Called Session of the 42nd Legislature makes an additional appropriation of \$50,000.00 for the same purposes. You may continue to sign warrants thereon for pay of the members so long as those two appropriations are not exhausted, since your present proceeding is a part (though a judicial, not a legislative part) of the First Called Session of the 42nd Legislature. Attention is directed to those provisions of House Bill No. 75 which expressly authorizes payment of per diem, etc., of "post session" work of the First Called Session of the 42nd Legislature. While you are not now in a "post session," nevertheless the act evidences an intent to pay for the present work. Once these two appropriations are exhausted you will have no authority to draw warrants nor the House to make a further appropriation by resolution, even with concurrence of the Senate, for the appropriation of money is a legislative function which the Legislature is now powerless to exercise. Opinions of Attorney General, 1924-25, p. 283. In the event the aforementioned appropriations are exhausted before the present proceeding ends, the members of the House will have valid claims for mileage and per diem, based upon pre-existing law, for payment of which a subsequent Legislature could make a valid appropriation. Opinions of Attorney General, 1924-26, p. 329.

Your third inquiry reads as follows:

"(3) Under the conditions hereinabove set out, is the House entitled to retain employees during the time it shall continue to sit for the purposes hereinabove set out at the same compensation paid them during the thirty day period it sat for consideration of legislative matters, as provided for in the resolution hereinabove referred to, which was unanimously adopted by the House on August 14th, 1931, providing for the retention of such employees."

While we do not have a copy of the resolution referred to, since it has not yet been printed in the Journal, we quote the following explanatory paragraph from your letter:

"On August 14th, the House provided a resolution for the retention of such employees as the Speaker might deem necessary, including stenographers, pages, porters and other employees, who shall receive the same compensation for their services as was paid during the thirty day period in which the Legislature sat for the consideration of legislative matters, which resolution was unanimously adopted by the House, and pursuant to which all necessary employees have been retained."

The power of the House to sit during an impeachment hearing carries with it, by necessary implication, the power to employ such clerical help as may be necessary for the effective and efficient conduct of the hearing. Article 5962 expressly provides that the House when sitting for impeachment purposes, may employ agents to be paid as provided in resolutions of the House providing therefor out of any appropriations then existing or thereafter to be made. The House has express statutory authority, constitutionally granted, to retain employees during the present hearing and may pay them out of the appropriations heretofore made by House Bills Nos. 1 and 75, passed during the legislative session of the First Called Session of the Forty-second Legislature. The simple House Resolution of August 14 was not in any sense an appropriation. The appropriation had been previously made. The House must express its will in some manner in determining the number

of employees necessary to be retained for the present hearing. It has done so by a simple resolution, passed in pursuance of express statutory authority. We answer your third question in the affirmative.

Very truly yours,
(Signed) R. W. YARBROUGH,
Assistant Attorney General.

This opinion has been considered in conference, approved, and is now ordered recorded.

(Signed) BRUCE W. BRYANT,
Acting Attorney General of Texas.